Sec. 1, Art. 1, "a consideration called the price" is necessary for a contract of sale, and in Sec. 9, Art. 2, the act states that "the price may be made payable in any personal property."

WILLS—CONSTRUCTION—EFFECT OF SUBSEQUENT CHANGE OF JUDICIAL INTERPRETATION.—Testator used certain language disposing of his real estate. According to the settled construction given to such language by the courts at the time the will was made, his daughter's daughter took a vested remainder. The courts have since determined that such language gives only a contingent estate. *Held,* that the rights of the beneficiaries are to be determined by the construction which the law would have given to the will when made. *Hood et al.* v. *Pennsylvania Society to Protect Children from Cruelty* (1908), — Pa. —, 70 Atl. 845.

Shall a will speak as of the date of the drafting thereof or as of the date of the death of the testator? The courts and writers on the law of wills have been troubled in answering this question. JARMAN, WILLS, Vol. 1, 5th Am. Ed. 318 (Chap. X), and cases cited therein. At first sight this case seems to be directly in point upon this query, but on closer examination it will be found only a phase of the broader subject, but so closely allied thereto that an understanding of what the authorities have thought and said helps wonderfully in a discussion of the principles of law more directly involved. JARMAN, WILLS, supra. The chief interest here is found in the light which is thrown upon the evident desire of the courts to get back to "the true rule of looking only to the [testator's] actual intent." In considering these facts the general principle of law "that when a judicial decision is rendered the law is not presumed to be changed by it, but to have been the same before as after, although previous decisions have been to a different effect" is met with. To unqualifiedly accept this principle would not permit the rendition of the decision here reached. The court in its decision did recognize the general principle of law but refused to apply it in the face of the well established cardinal principle of the law of wills, to wit, the intention of the testator must prevail. This decision apparently stands alone among the reported cases in the courts of last resort. There are, however, many cases which might be regarded as analogous, in which a statutory change subsequent to the drafting and execution of a will and affecting rights of beneficaries thereunder is involved. ROOD, WILLS, § 402, aptly states the reason of law to be "that a statute inaugurating some change in public policy ought not to be so applied as to disappoint persons who have had their wills drawn upon good legal advice, and have not taken the pains to consult a lawyer every day afterwards till the time of their deaths to know whether the law has been changed." This expression of what the law ought to be accords with the weight of judicial authority in both the American and English courts. *Quick's Executor* v. *Quick* (1870), 21 N. J. Eq. 13; *Mander* v. *Harris* (1884), 27 Ch. Div. 166, 54 L. J. Ch. 143, 51 L. T. (N. S.) 380; *In re Swenson's Estate* (1893), 55 Minn. 300, 56 N. W. 1115; and cases cited under them. The law of Pennsylvania itself accords with this view. *Gable's Executors* v. *Daub* (1861), 40 Pa. St. 217; *Taylor* v. *Mitchell* (1868), 57 Pa. St. 209. There are

cases to the contrary. That a subsequent act of the legislature may disturb the rights of beneficiaries under a will is the doctrine of at least one English and one American case. Both are to be distinguished or at least reconciled, as the facts of both cases show the statute to have been passed before the testator's death, and either he actually knew or was legally presumed to know the change made in the effect of his will thereby and to have acquiesced therein. *Hasluck* v. *Pedley* (1874), L. R. 19 Eq. 271; *Lincoln* v. *Perry* (1889), 149 Mass. 368, 21 N. E. 671, 4 L. R. A. 215. The law as changed by judicial interpretation can be considered almost analogous to the law as changed by an act of the legislature. The reason why a statutory change should not apply to a will previously made, and the authorities which hold that it does not so apply afford a safe guide to the decision of a case wherein a change of judicial interpretation has threatened to alter the rights of the beneficiaries under a will obtaining at the drafting and execution thereof. The only question likely to arise in criticism of the principal case is the summary manner in which the court disposed of the rule that the law is not presumed to be changed by a change of judicial interpretation mentioned above. But for this general principle of law interposing, the analogy between this case and the case of a subsequent change of law by legislative act would be unquestioned; the analogy recognized the decision must be universally approved as in accord with the weight of reason and of authority.

WILLS—DEFINITE FAILURE OF ISSUE—STATUTE DECLARING PRESUMPTION.—A will gave plaintiff real estate "for and during the term of his natural life, but in the event of death leaving issue said real estate shall go and vest in said issue absolutely and in fee, but in the event of death * * * without issue * * *" over in fee. The lower court held that plaintiff took an estate in fee tail, which by the act of 1855 became and was enlarged into a fee simple. A statute of Pennsylvania (Act No. 172, 1897, P. L. 213) provides that any devise * * * containing the words "die without issue," or "die without leaving issue," or "have no issue," or any words importing the failure of issue, shall be construed to mean a failure of issue in the lifetime or at the death of such person (i. e., a definite failure of issue) unless a contrary intent appear. This Act the lower court and counsel failed to consider, and it was *held* in the Supreme Court on authority of said Act that plaintiff took a life estate merely. *Lewis et al.* v. *Link Belt Co.* (1908), — Pa. —, 70 Atl. 967.

It seems strange that an Act of such great importance should wait for nearly eleven years for judicial interpretation, even more strange that it should not be brought into requisition by court and counsel.

At common law, in a devise of lands, a limitation of them in default of issue, unexplained, was construed as importing prima facie an indefinite failure of issue. 2 BIGELOW'S JARM. WILLS (6th Ed.), *1324, p. 466. This rule of the common law has long been the rule in Pennsylvania. *George* v. *Morgan*, 16 Pa. 95, and cases cited therein. As the court in this last case points out on p. 105, the manifest intent of the testator must often yield to the rule. Kent says that the construction given these words by the common law is an unnatural one, and in most cases produces an effect contrary to what the